



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 14, 1995

Mr. David Douglas  
Assistant Chief, Legal Services  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR95-115

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27883.

The Texas Department of Public Safety (the "department") received a request for a crime lab report concerning a clandestine chemical laboratory in McAllen, Texas. You claim that the requested information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 provides that:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983).

Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public).

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You state that although the district attorney's office is not going to prosecute this matter the Drug Enforcement Agency is conducting an investigation and has requested that the department not release the information while the investigation is pending. Accordingly, you may withhold the requested information under section 552.108 of the Government Code. *See* Open Records Decision No. 340 (1982) (where there is ongoing federal investigation, information related to it may be withheld by district attorney, even though state investigation has been discontinued).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/LBC/rho

Ref: ID# 27883

Enclosures: Submitted documents

cc: Mr. Roberto M. García  
García & López  
214 West Cano Street  
Edinburg, Texas 78539  
(w/o enclosures)